

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 17, 2008

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of  
Adopting Revisions to the  
Rules Governing Health  
Maintenance Organizations

CASE NO. INS-2008-00083

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to Chapter 211 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Maintenance Organizations" ("Rules"), which amend the Rules at 14 VAC 5-211-50, 14 VAC 5-211-90 and 14 VAC 5-211-100.

The proposed amendments to the Rules are necessary in Section 50 to correct an error in a cited section of the Code of Virginia, and required in Sections 90 and 100 to comply with amendments to Code of Virginia § 38.2-4303 passed by the 2008 General Assembly with regard to deductibles and copayments.

The Commission is of the opinion that the proposed amendments to 14 VAC 5-211-50, 14 VAC 5-211-90 and 14 VAC 5-211-100 should be considered for adoption.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing Health Maintenance Organizations," which amend the Rules at 14 VAC 5-211-50, 14 VAC 5-211-90 and 14 VAC 5-211-100, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed amendments shall file such comments or hearing request on or before May 30, 2008, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2008-00083. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website:

<http://www.scc.virginia.gov/case>.

(3) If no written request for a hearing on the proposed amendments is filed on or before May 30, 2008, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed amendments, may adopt the amendments proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed amendments, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the proposed adoption of the amendments by mailing a copy of this Order, together with the proposed amendments, to all insurers licensed by the Commission as health maintenance organizations in the Commonwealth of Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed amendments, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments on the Commission's website, <http://www.scc.virginia.gov/case>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

**Project 1240 - Proposed**

**STATE CORPORATION COMMISSION, BUREAU OF INSURANCE**

**Health Maintenance Organizations**

**14VAC5-211-50. Financial projections.**

The commission may require a health maintenance organization licensed in Virginia to submit to it periodic updates of the projection of operating results required by §38.2-4301 B 40 11 of the Code of Virginia. Each update shall also include a complete explanation of any significant variance between actual operating results and the operating results that were forecasted under the projection last submitted to the commission and documentation of all critical assumptions. Critical assumptions include, but are not limited to, enrollment levels, premium rates, provider reimbursements, utilization rates, risk-sharing arrangements with providers, general and administrative expenses, excess and other insurance expenses and recoveries, coordination of benefits, costs of long-term financing, and inflation. The commission may revise or request a revision of any financial projection that it deems to be unreasonable relative to the health maintenance organization's historic performance.

**Part III**

**Contract Requirements**

**14VAC5-211-90. Copayments.**

A. A health maintenance organization may require a reasonable copayment of enrollees as a condition for the receipt of a specific health care service. A copayment shall be shown in the evidence of coverage as either a specified dollar amount or as coinsurance.

B. If the health maintenance organization has an established copayment maximum, it shall keep accurate records of each enrollee's copayment expenses and notify the enrollee when his copayment maximum is reached. The notification shall be given no later than 30 days after the health maintenance organization has processed sufficient claims to determine that the copayment maximum is reached. The health maintenance organization shall not charge additional copayments for the remainder of the contract or calendar year, as appropriate. The health maintenance organization shall also promptly refund to the enrollee all copayments charged after the copayment maximum is reached. Any maximum copayment amount shall be shown in the evidence of coverage as a specified dollar amount, and the evidence of coverage shall clearly state the health maintenance organization's procedure for meeting the requirements of this subsection.

C. The provisions of this subsection shall not apply to any Family Access to Medical Insurance Security (FAMIS) Plan (i) authorized by the United States Centers for Medicare and Medicaid Services pursuant to Title XXI of the Social Security Act (42 USC §1397aa et seq.) and the state plan established pursuant to Chapter 13 (§32.1-351 et seq.) of Title 32.1 of the Code of Virginia and (ii) underwritten by a health maintenance organization.

**14VAC5-211-100. Deductibles.**

A. A health maintenance organization may require an enrollee to pay ~~a reasonable~~ an annual deductible in accordance with §38.2-4303 A 8 of the Code of Virginia.

~~B. Deductibles for basic health care services shall be considered unreasonable in at least the following situations:~~

~~1. When accessibility to health care is adversely affected;~~

~~2. When a health maintenance organization cannot demonstrate an ability to monitor and implement deductible plans;~~

~~3. If the health maintenance organization's Risk Based Capital (RBC) level is in a Company Action Level pursuant to the provisions of §38.2-5503 of the Code of Virginia. The commission shall determine the RBC level from (i) the most recently filed year end RBC Report submitted to the commission, or (ii) the most recently filed quarterly projected RBC Report if the health maintenance organization is on a quarterly projected RBC reporting basis. If at any time a RBC Report is filed with the commission that reports a RBC level below the Company Action Level, the health maintenance organization shall immediately suspend writings of all new deductible policies until a subsequent RBC Report is filed and accepted by the commission that confirms a RBC level above the Company Action Level.~~

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

Bonnie S. Salzman (Signature of certifying official)

Name and title of certifying official: Bonnie S. Salzman  
Associate General Counsel

Name of agency: State Corporation Commission

Date: April 15, 2008